1	wo		
2			
3			
4			
5			
6	IN THE UNITED STATES DISTRICT COURT		
7	FOR THE DISTRICT OF ARIZONA		
8			
9	Donald Richard Perry,) CV-04-2577-PHX-JAT	
10	Plaintiff,		
11	V.	ORDER	
12	Joseph M. Arpaio,		
13	Defendant.		
14		<u></u>	
15	Pending before the Court is Plaintiff's Motion for Order to Appoint Trial Counsel		
16	(Doc. # 33).		
17	Plaintiff, a former county jail inmate, filed a civil rights action against Defendant		
18	alleging that severe overcrowding (Count I) and the lack of sufficient outdoor recreation at		
19	the jail (Count IX) violated his constitutional rights, specifically the Eighth and Fourteenth		
20	Amendments. ¹ By Order dated October 13, 2006, the Court dismissed Plaintiff's claims for		
21	punitive damages and injunctive relief. Plaintiff's claims for compensatory or nominal		
22	damages premised on alleged violations of the Eighth and Fourteenth Amendments were not		
23	dismissed and remain pending.		
24	On October 30, 2006, Plaintiff filed a Motion for Order to Appoint Trial Counsel		
25	(Doc. # 30). Plaintiff requests the appoint	intment of counsel "[d]ue to the fact that he is a	
26			
27	¹ Upon screening of the First Amende	ed Complaint, the Court dismissed 16 defendants	
28	and Counts II-VIII and X.	20 Complaint, the Court distinssed to detendants	

layman at law and unfamiliar with matters of jurisprudence relating to civil trials" such that "it may be a burden to the court when conducting the anticipated trial." Plaintiff further represents that he "will take the stand and cannot question himself. Such an inability will render a degree of unfairness toward Plaintiff which the Defendant will not be subjected to." Finally, Plaintiff represents that he "has attempted to obtain civil trial counsel but cannot meet the required retainer fee due to financial inability" and that he "has been unable to find an attorney who will take the case on a contingency on the outcome of the trial."

There is no constitutional right to appointment of counsel in a civil case. *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982). The Court, however, does have the discretion to allow litigants to proceed *in forma pauperis* and to appoint counsel in "exceptional circumstances." *See* 28 U.S.C. § 1915; *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). In order to determine whether exceptional circumstances exist, the Court evaluates the petitioner's "'likelihood of success on the merits [and] the ability of the petitioner to articulate his or her claim *pro se* in light of the complexity of the legal issues involved." *Richard v. Harper*, 864 F.2d 85, 87 (9th Cir. 1988) (quoting *Weygant v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)); *see also Wilborn*, 789 F.2d at 1331. Neither factor is determinative, and the Court must consider both factors before reaching a decision on a request for appointment of counsel. *See Wilborn*, 789 F.2d at 1331.

Having considered both factors, the Court finds that Plaintiff has not demonstrated both a likelihood of success on the merits and that any difficulty he is experiencing in attempting to litigate his case is due to the complexity of the issues involved. More particularly, the Court notes that the only remaining claims in this case are Plaintiff's claims for compensatory or nominal damages for the alleged violations of the Eighth and Fourteenth Amendments based on allegations of severe overcrowding and lack of sufficient outdoor recreation at the jail. Only one defendant remains and the remaining claims against him are not complex. Being "unfamiliar with matters of jurisprudence relating to civil trials" is not

Case 2:04-cv-02577-JAT Document 34 Filed 11/07/06 Page 3 of 3

1	indicative of the complexities of the issues involved.	
2	Finally, Plaintiff's concerns regarding the inability to question himself on the witness	
3	stand are unfounded. Questioning oneself on the witness stand is not a novel concept. At	
4	the appropriate time, the Court will discuss with Plaintiff the options available for him to	
5	present his testimony. Accordingly, at the present time, this case does not present	
6	"exceptional circumstances" justifying the appointment of counsel.	
7	However, Plaintiff may contact the following organization to determine whether it	
8	has an attorney available to represent Plaintiff <i>pro bono</i> or at a reduced rate:	
9	Volunteer Lawyers Program 305 South Second Avenue	
10	P.O. Box 21538 Phoenix, Arizona 85036-1538	
11	(602) 258-3434	
12	For the foregoing reasons,	
13	IT IS ORDERED that Plaintiff's Motion for Order to Appoint Trial Counsel (Doc.	
14	# 33) is DENIED .	
15	DATED this 7th day of November, 2006.	
16		
17	() (Lillion	
18	James A. Teilborg / United States District Judge	
19	omica suites sistemana	
20		
21		
22		
23		
24		
25		
26		
27		
28	2	